

February 13, 2013

US EPA RECORDS CENTER REGION 5



462113

Steven P. Kaiser
Associate General Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

**Re: In the Matter of Western Tar Products Site, Terre Haute,
Vigo County, Indiana, V-W-11-C-966**

Dear Steve:

This letter is in response to your February 5, 2013 letter regarding the Western Tar Products site in Terre Haute, Indiana, which is subject to an administrative order issued by EPA. You have requested an update on the status of the litigation between CAVU Ops., Inc. ("CAVU") and its insurance carriers.

As an initial matter, as you know we have recently requested the most recent invoice for oversight costs from EPA. We understand that we will receive that invoice soon. Once we receive that invoice, we will demand that the insurers immediately pay those oversight costs. We will continue to aggressively pursue our demand for payment of these costs.

To assist you in understanding the status of the litigation and sites at issue, I have attached the following documents: (1) the Amended Complaint (filed April 23, 2012); (2) the Indiana Department of Environmental Management's ("IDEM") April 25, 2012 letter to CAVU demanding further investigation on the north end of the Terre Haute Site (referred to as the "Expanded Process Area"); (3) CAVU's July 2012 motion to set a settlement conference to negotiate an agreement on investigation activities for the Expanded Process Area due to the insurers' delays in entering into an agreement; (4) IDEM's August 7, 2012 letter terminating CAVU's involvement in the Voluntary Remediation Program and placing the Expanded Process Area in the State Cleanup Program due to the delays in conducting work at the Expanded Process Area; (5) the parties' recent joint motion to amend the case

management deadlines to allow the parties time to negotiate a global resolution before actively litigating the case; and (6) the court's order on the joint motion.

These documents demonstrate the difficulties and delays CAVU has experienced in attempting to work towards a global resolution with its insurers. CAVU and the parties initially hoped to have a settlement conference with the court in May 2012. However, in April 2012 IDEM made it clear that the work required to address environmental issues for the Expanded Process Area would have to be much more extensive than CAVU originally anticipated (Attachment 2). CAVU then began negotiating with its insurers to pay for the necessary investigation activities for the Expanded Process Area. The purpose of this investigation was to fully delineate the site and enable CAVU's environmental consultant, Keramida Environmental, to develop an accurate cost estimate for remediation of the Expanded Process Area. Such an accurate cost estimate was necessary to allow the parties to engage in global settlement discussions. The insurers are unwilling to settle issues with respect to any individual site, but insist that any final settlement (outside of environmental investigation work) must encompass all sites. Therefore, CAVU needs accurate estimates for all sites to attempt to reach an agreement on remediation and closure of the sites.

The negotiations for the investigation work for the Expanded Process Area dragged on for a few months (Attachment 2). With the continued delays and lack of progress at the site, on August 7, 2012, IDEM terminated CAVU's involvement in the Voluntary Remediation Program and placed the Expanded Process Area in the State Cleanup Program (Attachment 3). This program change resulted in assignment of a new IDEM project manager to the site. The change in IDEM programs and project manager will result in some different requirements for the site, which may result in a different scope of work and costs.

CAVU eventually was able to reach an agreement with the insurers on the necessary investigation activities for the Expanded Process Area. Keramida now has completed extensive investigatory work that has allowed it to delineate the site. With this work completed, CAVU was hoping to have a settlement conference with all the insurers in December 2012 to discuss a global resolution for all three sites. However, Keramida was not able to obtain the guidance it needed from IDEM in advance of the date for the settlement conference to develop an accurate cost estimate for the Expanded Process Area and, consequently, an accurate estimate for all three sites. The new program manager knew little about the site and was attempting to get up to speed on the site. As a result, the court cancelled the settlement conference for December 2012.

To allow Keramida the necessary time to obtain the guidance it needs and develop a cost estimate, the parties moved the court to amend the case

management deadlines (Attachment 5). This extension should allow the parties to attempt to negotiate a settlement before actively litigating the case. The court agreed to extend the deadlines, but will not agree to any further extensions (Attachment 6). The parties now are hoping to have a settlement conference no later than May 2013. If the parties are unable to reach a resolution by then, the parties will have to proceed with the litigation. Trial is expected to occur in July 2014.

Significantly, Keramida just obtained most of the guidance it needs to understand IDEM's requirements for the Expanded Process Area and to develop a cost estimate. Keramida is meeting with IDEM on February 20 to hopefully further clarify IDEM's requirements and obtain any further guidance it needs.

I hope that this information adequately describes the status of the litigation and the sites. Please do not hesitate to contact me if you have any questions or require any further information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert R. Clark', with a long horizontal flourish extending to the right.

Robert R. Clark

RRC/mma
Enclosures

ATTACHMENT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CAVU OPS., INC.,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 1:11-cv-01527-TWP-MJD
AMERICAN MOTORISTS INSURANCE)	
COMPANY, LUMBERMEN'S MUTUAL)	
CASUALTY COMPANY, LUMBERMEN'S)	
UNDERWRITING ALLIANCE, UNIVERSAL)	JURY TRIAL DEMANDED
UNDERWRITERS INSURANCE COMPANY,)	
THE NORTH RIVER INSURANCE COMPANY,)	
NORTHERN INSURANCE COMPANY, UNITED)	
STATES FIRE INSURANCE COMPANY,)	
PROVIDENCE WASHINGTON INSURANCE)	
COMPANY, FIDELITY AND GUARANTY)	
INSURANCE UNDERWRITERS, INC., ST.)	
PAUL MERCURY INSURANCE COMPANY,)	
THE TRAVELERS CASUALTY AND SURETY)	
COMPANY (f/n/a THE AETNA CASUALTY)	
SURETY AND COMPANY and UNITED)	
STATES FIDELITY AND GUARANTY)	
COMPANY,)	
)	
Defendants.)	

Amended Complaint for Damages and Declaratory Judgment

Plaintiff, CAVU Ops., Inc., as successor in interest to The Western Tar Products Corporation, Indiana Wood Preserving Company, and Andover, Inc. ("CAVU") for its Amended Complaint against Defendants, American Motorists Insurance Company, Lumbermen's Underwriting Alliance, Universal Underwriters Insurance Company, The North River Insurance Company, Northern Insurance Company, United States Fire Insurance Company, Providence Washington Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Mercury Insurance Company, The Travelers Casualty and Surety

Company (f/n/a the Aetna Casualty and Surety Company) and United States Fidelity and Guaranty Company (collectively “the Issuing Carriers”), states as follows:

Parties

1. CAVU Ops., Inc. (“CAVU”) is incorporated in Indiana and has its principal place of business in Terre Haute, Indiana.
2. CAVU is the successor in interest to The Western Tar Products Corporation, Indiana Wood Preserving Company, and Andover, Inc.
3. American Motorists Insurance Company (“American Motorists”) is incorporated in Illinois and has its principal place of business in Illinois. American Motorists was, at all relevant times, authorized to issue insurance in Indiana.
4. Lumbermen’s Underwriting Alliance (“Lumbermen’s Underwriting”) is incorporated in Missouri and has its principal place of business in Florida. Lumbermen’s Underwriting was, at all relevant times, authorized to issue insurance in Indiana.
5. Universal Underwriters Insurance Company (“Universal Underwriters”) is incorporated in New Jersey and has its principal place of business in Kansas. Universal Underwriters was, at all relevant times, authorized to issue insurance in Indiana.
6. The North River Insurance Company (“North River”) is incorporated in New Jersey and has its principal place of business in Texas. North River was, at all relevant times, authorized to issue insurance in Indiana.
7. Northern Insurance Company (“Northern Insurance”) is incorporated in New York and has its principal place of business in Illinois. Northern Insurance was, at all relevant times, authorized to issue insurance in Indiana.

8. United States Fire Insurance Company (“U.S. Fire”) is incorporated in Delaware and has its principal place of business in Texas. U.S. Fire was, at all relevant times, authorized to issue insurance in Indiana.

9. Providence Washington Insurance Company (“Providence Washington”) is incorporated in Rhode Island and has its principal place of business in Rhode Island. Providence Washington was, at all relevant times, authorized to issue insurance in Indiana.

10. Fidelity and Guaranty Insurance Underwriters, Inc. (“F&GIU”) is incorporated in Wisconsin and has its principal place of business in Connecticut. F&GIU was, at all relevant times, authorized to issue insurance in Indiana.

11. St. Paul Mercury Insurance Company (“St. Paul”) is incorporated in Minnesota and has its principal place of business in Minnesota. St. Paul was, at all relevant times, authorized to issue insurance in Indiana.

12. The Travelers Casualty and Surety Company (f/n/a the Aetna Casualty and Surety Company) (“Travelers”) is incorporated in Connecticut and has its principal place of business in Connecticut. Travelers was, at all relevant times, authorized to issue insurance in Indiana.

13. United States Fidelity and Guaranty Company (USF&G) is incorporated in Connecticut and has its principal place of business in Connecticut. USF&G was, at all relevant times, authorized to issue insurance in Indiana.

Jurisdiction

14. Pursuant to 28 U.S.C. § 1332(a)(1), this Court has jurisdiction over the case because there is complete diversity of citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

15. Pursuant to 28 U.S.C. § 2201, the Court may enter declaratory judgment in this matter.

16. Pursuant to Rule 57 of the Federal Rules of Civil Procedure, the Court may enter declaratory judgment in this matter.

Venue

17. Pursuant to 28 U.S.C. § 1391(a)(2), venue of this action is proper in this Court as the judicial district in which a substantial part of the events or omissions giving rise to the underlying claims occurred and the subject insurance policies issued were applied for, issued and requested to be performed in this district.

Factual Background

A. The Sites at Issue

18. CAVU owns property at 2525 Prairieton Road in Terre Haute, Indiana (“the Terre Haute Site”).

19. The Terre Haute Site has been operated under a series of different names comprising the same company. On March 14, 1910, the Indiana Zinc Creosoting Company was formed and operated at the Terre Haute Site. Through a series of name changes, the Indiana Creosoting Company became the Indiana Wood Preserving Company. On December 27, 1965, the Indiana Wood Preserving Company, Inc. changed its name to the Western Tar Products Corp. Finally, on June 1, 2000, the Western Tar Products Corp. changed its name to CAVU Ops.

20. The Terre Haute Site was originally developed as a yard operation around 1910. From the 1920s to 1950s, the facility was utilized as both a yard operation and treatment facility for railroad ties. In the mid-1950s, the Terre Haute Site was developed for

use as a processing/treatment facility for the manufacturing of tar materials and creosote preservatives. Since that time, the Terre Haute Site has been used for the production and storage of coal tar, driveway sealer, roofing pitch and coal tar treated cross-ties, switch ties and cross plugs.

21. Western Tar Products Corporation, the predecessor in interest to CAVU, owned and operated the Terre Haute Site between approximately 1910 and June 1, 2000.

22. CAVU, the successor in interest to Western Tar Products Corporation, has owned the Terre Haute Site since on or about June 1, 2000.¹

23. Western Tar Products Corporation manufactured pressure-treated railroad ties at the Terre Haute Site.

24. CAVU also owns property located at 1471 Channel Avenue in Memphis, Shelby County, Tennessee, which is on President's Island #45 in the Mississippi River ("the Memphis Site").

25. The Memphis Site was formerly used by the Western Tar Products Corporation to refine crude coal tar into tar distillates, refined tar, and pitch. The Memphis Site began operations in 1955. Western Tar continued operations at the Memphis Site until 2000.

B. Insurance Policies Issued by the Issuing Carriers to CAVU.

26. The Issuing Carriers sold commercial general liability ("CGL") insurance coverage to The Western Tar Products Corporation, Indiana Wood Preserving Company, and/or Andover, Inc. for the Site. As successor in interest to each of these entities, CAVU

¹ The Terre Haute Site has been owned by one corporate entity since 1910. The corporate entity only changed names. As explained above, the name before June 1, 2000 was Western Tar Products Corporation, and the name following June 1, 2000 was CAVU.

holds the same rights under these Policies and will hereinafter be referred to as the policy holder.

27. The following are the CGL insurance policies issued to CAVU by the Issuing

Carriers:

Policy Number	Policy Year	Insurer
27 LC 2930	8/20/54 – 8/20/55	Travelers/Aetna
27 AL 3433	8/20/59 – 8/20/60	Travelers/Aetna
27 AL 4283	8/20/60 – 8/20/61	Travelers/Aetna
27 AL 4283	8/20/61 – 8/20/62	Travelers/Aetna
27 AL 4283	8/20/62 – 8/20/63	Travelers/Aetna
27 AL 5660 CC	8/20/63 – 8/20/64	Travelers/Aetna
27 AL 6605 CM	8/20/64 – 8/20/65	Travelers/Aetna
1 CC 717908	1/02/74 – 1/01/75	USF&G
1 CC 834221	1/01/75 – 8/09/75	USF&G
326533	8/09/75 – 8/09/76	Universal Underwriters
204634	8/09/76 – 8/09/77	Lumbermen's Underwriting
204905	8/09/77 – 8/09/78	Lumbermen's Underwriting
211365	8/09/78 – 8/09/79	Lumbermen's Underwriting
540-123512	8/09/79 – 8/09/80	North River
540-475262	8/09/80 – 8/09/81	North River
540-477459	8/09/81 – 8/09/82	North River
540-506620	8/09/82 – 8/09/83	North River
540-505898	8/09/83 – 8/09/84	North River
540-643006	8/09/84 – 8/09/85	North River
540-645458	8/09/85 – 8/09/86	North River
540-721144	8/09/86 – 8/09/87	U.S. Fire
CL 495204	8/09/87 – 8/09/88	Providence Washington
EPA0355707	8/09/88 – 8/09/89	Northern Insurance
ECA07088785	8/09/89 – 8/09/90	Northern Insurance
3YM 484758-00	8/09/90 – 8/09/91	American Motorists
3YM 484758-01	8/09/91 – 8/09/92	American Motorists
3YM 484758-02	8/09/92 – 8/09/93	American Motorists
3YM 484758-03	8/09/93 – 8/09/94	American Motorists
3YM 484758-04	8/09/94 – 8/09/95	American Motorists
1 CP 300246375 00	8/09/95 – 8/09/96	F&GIU
1 CP 300246375 01	8/09/96 – 8/09/97	F&GIU
1 CP 300246375 02	8/09/97 – 8/09/98	F&GIU
CK 01302245 and CK 01302251	8/09/98 – 9/01/98	St. Paul
CK 01302232	9/01/98 – 9/01/99	St. Paul
CK 01302232	9/01/99 – 9/01/00	St. Paul

CK 01302232	9/01/00 – 11/01/00	St. Paul
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28. The policies identified above will be collectively referred to as “the Policies.”

29. The Policies insure CAVU against loss in the event of bodily injury, personal injury, and/or property damage.

30. Under the terms of the Policies, the Issuing Carriers have a duty to defend CAVU against any suit alleging bodily injury, personal injury, or property damage even if such suit is groundless, false, or fraudulent.

C. Contamination in the Process Area at the Terre Haute Site and IDEM's Suit against CAVU.

31. In or about 1999, during environmental due diligence performed in connection with the sale of the Site, CAVU discovered soil contamination on the north end of the Site where it conducted operations since the early 1900s (“the Process Area”). The contaminants identified in the Process Area include volatile organic compounds and polynuclear aromatic hydrocarbons.

32. CAVU entered the Process Area into the Indiana Department of Environmental Management’s (“IDEM”) Voluntary Remediation Program (“VRP”) to address the soil contamination.

33. CAVU submitted a Remediation Work Plan (“RWP”) proposal to IDEM on May 21, 2007, pursuant to its obligations under the VRP. The RWP was intended to address the soil contamination that had been discovered in the Process Area.

34. On April 1, 2008, IDEM sent a letter to CAVU regarding the proposed RWP that CAVU had submitted to IDEM. A copy of that letter is attached as Exhibit A. With the

April 1, 2008 letter, IDEM demanded that CAVU conduct extensive and costly work at the Terre Haute Site.

35. IDEM requested that CAVU delineate any contamination at the Site to residential default cleanup levels beyond the Terre Haute Site boundaries. In addition, IDEM demanded that CAVU perform a number of other tasks that go far beyond the area of soil contamination in the Process Area that CAVU intended to address through the VRP.

36. IDEM has continued to direct CAVU's activities at the Site. In 2011, CAVU submitted another proposed RWP to IDEM. IDEM, however, refused to approve the RWP until CAVU conducted additional delineation activities at the Terre Haute Site and revised the RWP based on the results of the delineation. CAVU is in the process of conducting those additional delineation activities.

37. The Issuing Carriers have paid for some defense and environmental investigation costs for the Process Area, but the Issuing Carriers have not agreed to pay for remediation of the Process Area.

38. On August 12, 2011, CAVU demanded that the Issuing Carriers pay for CAVU's costs to remediate the Process Area of the Terre Haute Site. CAVU's demand to the Issuing Carriers is attached as Exhibit B. As CAVU noted in its demand, the remediation costs represent the most significant expense to be incurred by CAVU Ops for the Process Area.

39. None of the issuing Carriers have agreed to pay for remediation of the Process Area in response to CAVU's August 12, 2011 demand.

D. The South End of the Terre Haute Site and Discovery of Contamination on the South End.

40. On June 29, 2009, IDEM received a report from an anonymous fishermen that black material was seeping from the banks of the Wabash River into the river itself. The seeping occurred from the portion of the Terre Haute Site located to the south of Interstate 70, and contiguous with the parcel of the Terre Haute Site that extends north of Interstate 70 (“the South End”).

41. On July 7, 2009, U.S. EPA and IDEM representatives responded to this report by taking a boat out onto the Wabash River in the general vicinity of the reported release and making observations from the river. The U.S. EPA representative saw black material seeping from the riverbank that forms the western edge of the Terre Haute Site into the Wabash River. The black material has been identified as coal tar.

42. The coal tar on the South End is comprised of, among other substances, volatile and semi-volatile compounds including: acenaphthylene, anthracene, benzo(a)anthracene, 2-chloronaphthalene, and chrysene.

43. The coal tar is present at the South End as a result of long-term historical operations at the adjacent property, also owned by CAVU.

44. No coal tar operations were ever conducted on the South End. The South End was only used to stack railroad ties for air drying.

45. Therefore, the materials discovered on the South End in 2009 were likely transported to and deposited in this location.

46. No coal tar or railroad ties were buried on the South End, where these materials were uncovered in 2009.

47. The only active events that occurred on the South End from 1973 to the present time were addition of material to the Wabash River bank wall for stabilization and erosion control.

48. First, sometime between 1975 and 1985 (and most likely around 1980), CAVU built a retaining wall about fifty feet in length to stabilize the river bank and prevent erosion. The wall was constructed with pilings from CAVU's inventory installed on the vertical plane, with cross tie stringers connected to the piling on the horizontal plane. This support structure was then back filled with stumps, dirt, rip rap, tie ends, gravel, barrels, concrete and other materials of sufficient weight and stability to remain in place.

49. Second, sometime between 1985 and 1995 (and most likely around 1990), a portion of the Wabash River bank wall, adjacent to Highway 63 and approximately 50-75 yards south of the area where the retaining wall previously was built, caved in. The Indiana Department of Transportation (INDOT) notified CAVU and immediately worked to repair the cave-in to protect Highway 63 from being undercut by bank erosion. INDOT rebuilt the bank using clean fill.

E. U.S. EPA's Suit against CAVU for the South End

50. U.S. EPA contacted CAVU on July 10, 2009, and advised it of its potential liability under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") as a result of the coal tar on the South End.

51. Shortly thereafter, CAVU selected Keramida Environmental, Inc. ("Keramida") as its environmental consultant to address the issues identified by U.S. EPA.

52. On July 13, 2009, Keramida mobilized to the South End of the Terre Haute Site and confirmed the presence of railroad ties and coal tar as identified by IDEM and U.S.

EPA. At that time, Karamida collected water and soil samples from the Wabash River and the river bank.

53. U.S. EPA demanded that CAVU further excavate and remove coal tar and other debris from the Property and conduct sampling to confirm the extent of environmental impacts.

54. CAVU complied with EPA's demands and has taken all reasonable and necessary action to respond to EPA's demands and concerns, all at considerable cost to CAVU. If CAVU had not responded to EPA's initial demands as it did, it could have been subjected to considerable fines and penalties and the costs of subsequent remediation would have been significantly higher.

55. On February 9, 2011, U.S. EPA issued a unilateral administrative order for the South End of the Terre Haute Site ("EPA Order"). The EPA Order is attached as Exhibit C.

56. On May 5, 2011, CAVU Ops issued its Notice of Intent to Comply with the EPA Order. This Notice of Intent is attached as Exhibit D. As the Notice of Intent provides, CAVU can comply with the EPA Order only to the extent that insurance proceeds are available to pay for the various tasks required by the Order.

F. CAVU's Notice to the Issuing Carriers for the EPA Suit

57. In November 2009, CAVU notified each of the Issuing Carriers of its claim for defense and indemnity under the Policies based on the environmental contamination and U.S. EPA's Suit. These letters are attached as Exhibit E.²

58. In each period covered by the Policies, there were one or more occurrences that triggered defense and indemnity coverage under the Policies.

² Several of the Issuing Carriers fall under the umbrella of the same insurance company or the responsibility of another insurance company. Therefore, although there are ten Issuing Carriers, notice letters were only issued to six companies which collectively are responsible for all of the Issuing Carriers and the Policies.

59. CAVU has provided the Issuing Carriers with considerable information regarding the South End of the Terre Haute Site and its claim for coverage.

60. CAVU has incurred considerable fees and expenses in investigating the coal tar on the South End and further defending against U.S. EPA's suit. CAVU has provided documentation of all its fees and expenses to the Issuing Carriers.

61. The Issuing Carriers have paid for some defense and environmental investigation costs for the South End, but the Issuing Carriers have not agreed to pay for remediation of the South End. The Issuing Carriers have not paid for the considerable environmental costs CAVU incurred at the onset of EPA's suit through the end of 2010.

62. On August 12, 2011, CAVU demanded that the Issuing Carriers pay for past environmental costs and future remediation costs for the South End. This August 12, 2011 letter is attached as Exhibit F. None of the Issuing Carriers have agreed to pay these costs to date. Three of the Issuing Carriers have specifically declined to pay for any remediation costs for the South End.

G. Discovery of Contamination at the Memphis Site

63. CAVU Ops first discovered contamination at the Memphis Site in 1999 during a Phase II Environmental Site Assessment.

64. Subsurface soil samples revealed the presence of benzene, ethylbenzene, xylene, 1,2,4 and 1,3,5-trimethylbenzene, and several polynuclear aromatic hydrocarbons. Groundwater samples revealed the presence of benzene, xylenes, naphthalene, phenanthrene, and several metals.

65. Additional investigation at the Memphis Site continued to reveal the presence of these compounds in soil and groundwater.

H. TDEC's Suit against CAVU

66. CAVU agreed to enter the Memphis Site into the Voluntary Cleanup, Oversight, and Assistance Program (VOAP) in the Tennessee Department of Environment and Conservation's (TDEC) Division of Superfund. TDEC and Western Tar entered into a Consent Agreement and Order ("Order") for assessment and remediation of the Memphis Site.

67. CAVU Ops has been conducting work at the Site under this Order and pursuant to TDEC's demands.

I. CAVU's Notice for the Memphis Site and its Demand for Coverage

68. On December 10, 2010, CAVU provided its notice of a claim for the Memphis Site to the Issuing Carriers. In that notice, CAVU stated that TDEC was demanding work beyond what CAVU expected to perform at the Memphis Site.

69. Following its December 10, 2010 notice, CAVU provided considerable documentation of its claim for the Memphis Site to the Issuing Carriers at their request. However, eight months later, CAVU still had not received any coverage decision from any of the Issuing Carriers.

70. On August 12, 2011, CAVU demanded coverage for the Memphis Site within 30 days. This August 12, 2011 letter is attached as Exhibit G. Only one of the Issuing Carriers (American Motorists) has provided any substantive response to CAVU's demand for coverage. American Motorists has agreed to provide a defense to CAVU for the Memphis Site, but has not agreed to provide an indemnity. None of the other Issuing Carriers have provided any response, other than to state that they need more time to evaluate the claim and make a coverage decision.

71. Some of the Issuing Carriers have indicated that they do not believe coverage exists for the Memphis Site because there was no demand, suit, or claim instituted by TDEC. This argument obviously is based upon the fact that CAVU Ops is participating in TDEC's voluntary clean up program.

72. However, under the law and the facts its clear that participation in such a "voluntary" program satisfies the suit or claim requirement in insurance policies.

73. TDEC is directing the work to be conducted at the Memphis Site, and CAVU is under compulsion to perform the work as required by TDEC.

74. On January 15, 2004, TDEC sent CAVU a summary of an assessment conference that occurred on January 8, 2004. The letter provided:

Jordan English stated that the purpose of the meeting was to get the Site Evaluation and Focused Feasibility Study portion of the project back on track. Jordan English stated that assurances were needed from Mr. Card that he intends to comply with the Consent Order and Agreement. . . .

Jordan English repeated that DSF wanted this site to remain in the VOAP program, but that future performance on the part of the PRP will determine DSF's ultimate course of action. Andrew Gremos stated that he understood DSF's position and would communicate it to Mr. Card along with potential actions DSF may take should the site not remain in the VOAP program.

The January 15, 2004 letter is attached as Exhibit H.

75. Most recently, TDEC demanded that CAVU perform further work for the Memphis Site. In late 2010, Keramida submitted a Groundwater Monitoring Report to TDEC and requested site closure. On November 19, 2010, however, TDEC denied CAVU's request for site closure and demanded that CAVU perform a Site Evaluation and Focused Feasibility Study. TDEC stated that it would reconsider the request for site closure only after this additional work is completed. TDEC's November 19, 2010 letter is attached as Exhibit I.

76. Furthermore, CAVU is cleaning up the Process Area at the Terre Haute Site under IDEM's Voluntary Remediation Program, and the Issuing Carriers have been paying defense and investigation costs for this area. There is no basis for the Issuing Carriers to differentiate CAVU's participation in TDEC's voluntary program.

Count I – Breach of Contract

77. CAVU incorporates by reference paragraphs 1 through 76 above as though fully set forth herein.

78. The Policies are valid and enforceable contracts.

79. CAVU timely notified the Issuing Carriers of the claims asserted against it in the U.S. EPA, IDEM and TDEC Suits.

80. CAVU complied with all conditions precedent under the Policies.

81. Under the Policies, the Issuing Carriers have a duty to both defend and indemnify CAVU against third-party claims for property damage and/or personal injury arising out of the environmental contamination at the Terre Haute and Memphis Sites, which are being pursued in the IDEM, U.S. EPA, and TDEC Suits.

82. The Issuing Carriers have breached their contractual obligations to CAVU by refusing to provide it with an indemnity against the claims arising out of environmental contamination at the Terre Haute and Memphis Sites, which are being pursued in the IDEM, U.S. EPA, and TDEC Suits.

83. CAVU is being forced to incur and has incurred attorneys' fees, environmental consulting fees, and other expenses as a result of the environmental

contamination on the Terre Haute and Memphis Sites, and due to the IDEM, U.S. EPA, and TDEC Suits.

84. As a direct and proximate result of the Issuing Carriers' breach of contract, CAVU therefore has suffered, and continues to suffer, damages. The Issuing Carriers are liable for all such damages.

Count II – Declaratory Judgment

85. CAVU incorporates by reference paragraphs 1 through 84 above as though fully set forth herein.

86. The Issuing Carriers have a contractual obligation to defend and indemnify CAVU under the Policies against third-party claims arising out of the environmental contamination on the Terre Haute and Memphis Sites, which are being pursued in the IDEM, U.S. EPA, and TDEC Suits. The Issuing Carriers have breached their obligations by refusing or failing to indemnify CAVU against these covered claims.

87. CAVU has been prejudiced and has suffered damages as a result of the Issuing Carriers' denial of or refusal to accept coverage under their policies for the third-party claims that have been asserted against CAVU arising out of environmental contamination on the Terre Haute and Memphis Sites, which are being pursued in the IDEM, U.S. EPA, and TDEC Suits.

88. Because there is a dispute between CAVU and the Issuing Carriers regarding the interpretation of and their obligations under the Policies, CAVU is entitled to a declaratory judgment stating that the Policies obligate the Issuing Carriers to defend and indemnify CAVU with respect to all covered claims.

Count III - Breach of Duty of Good Faith and Fair Dealing

89. CAVU incorporates by reference paragraphs 1 through 88 above as though fully set forth herein.

90. The Issuing Carriers owe a duty of good faith and fair dealing to CAVU as its insured.

91. The Issuing Carriers have breached their duty of good faith and fair dealing to CAVU by failing to make a prompt coverage determination and by failing to provide CAVU with an indemnity with respect to the third-party claims arising out of the environmental contamination on the Terre Haute and Memphis Sites, which are being pursued in the IDEM, U.S. EPA, and TDEC Suits.

92. CAVU has suffered damages as a result of this breach of the duty of good faith and fair dealing. These damages include, but are not limited to, attorneys' fees, environmental consulting fees, and other expenses as a result of the environmental contamination on the Terre Haute and Memphis Sites and the IDEM, U.S. EPA, and TDEC Suits.

93. The Issuing Carriers are liable to CAVU for all damages it has suffered as a result of the breach of the duty of good faith and fair dealing, including all costs incurred by CAVU in defending against the IDEM, U.S. EPA and TDEC Suits and the environmental contamination on the Terre Haute and Memphis Sites, plus pre-judgment interest, costs and attorneys' fees in pursuing this action, and punitive damages.

WHEREFORE, CAVU requests that the Court enter judgment in its favor and against the Issuing Carriers and award CAVU the following relief:

1. Reimbursement of costs CAVU has expended and will expend to investigate and remediate the environmental contamination on the Terre Haute and Memphis Sites;
2. Declaratory judgment stating that the Issuing Carriers' Policies obligate the Issuing Carriers to defend and indemnify CAVU with respect to all covered claims;
3. Attorneys' fees and other costs;
4. Pre-judgment interest; and
5. Punitive damages.

Jury Demand

CAVU hereby demands a trial by jury of all issues so triable pursuant to Trial Rule 38 and Article 1, Section 28 of the Indiana Constitution.

Respectfully submitted,

/s/ Michael D. Chambers

Robert R. Clark, Atty. No. 3488-49

Michael D. Chambers, Atty. No. 21573-06

Attorney for Plaintiff

TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
317-713-3500 (telephone)
317-713-3699 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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klansberry@lewiswagner.com

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Erika Stamper, on behalf of Providence Washington
SmithAmundsen LLC
estamper@salawus.com

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/s/ Michael D. Chambers

1595985v1

ATTACHMENT 2



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

100 North Senate Avenue
Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

April 25, 2012

Mr. Joseph B. Card
CAVU Ops, Inc.
P.O. Box 10159
Terre Haute, IN 47801

Re: Former Western Tar Site
2525 Prairieton Road
Terre Haute, Indiana
VRP #6990902

Dear Mr. Card:

As follow-up to a recent meeting on March 21, 2012 between IDEM and representatives of CAVU Ops Inc. (*Keramida Environmental and Taft Stettinius @ Hollister LLP*), the intent of this correspondence is to again reiterate the requirement for further investigation (and remediation if necessary) at the former Western Tar site in Terre Haute, IN. As IDEM has advised on numerous occasions and in multiple correspondences for this site, IDEM approval of a Remediation Work Plan (RWP) through the Voluntary Remediation Program is contingent on identification and appropriate remedial measures for the full extent of contamination associated with the source or release being addressed, regardless of property boundaries or predetermined project areas. If a specific point source or release cannot be identified, and if the entire site is considered to be the source of contamination due to historic site operations and housekeeping practices in general, then site delineation activities and the overall remedial approach must appropriately reflect this. As previously discussed in multiple correspondences, investigation and remediation cannot be limited to the Process Area of the site if contamination extends beyond this predefined boundary (which investigations confirm is the case). Of particular note, this investigation and remediation is likely to include the "DMS Building" at the site. If operations in this building have ceased, federal requirements also apply in accordance with 40 CFR Part 265 Subpart W – Drip Pads. Additionally, contamination that has migrated from your site onto offsite properties, environmentally sensitive areas, or into Waters of the State including the Wabash River must also be included in site characterization activities and remediation. The schedule of activities provided during our meeting by Keramida indicates that a revised RWP is planned to be submitted by June 20, 2012. Following 13 years of participation in the VRP, if site characterization cannot be completed and an approvable RWP as discussed cannot be submitted to this agency by August 1, 2012, our firm intention is to terminate participation for this site in the VRP and transfer IDEM regulatory oversight to the State Cleanup program.

If you have any questions, please contact me at (317)234-0966, (800) 451-6027, or at cwebb@idem.in.gov.

Sincerely,

Corey Webb,
Section Chief
Voluntary Remediation Program
Office of Land Quality

cc: Mr. Robert Clark, Taft Stettinius & Hollister LLP; One Indiana Square, Ste. 3500, Indpls., IN 46204-2023
Mr. Brian Harrington, Keramida Environmental; 401 N. College Ave., Indpls. IN 46202
Ms. Verneta Simon, US EPA Region 5; 77 West Jackson Boulevard, Chicago, IL 60604-3590
Mr. Harry Atkinson, IDEM State Cleanup Program



ATTACHMENT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CAVU OPS., INC.,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 1:11-cv-01527-TWP-MJD
AMERICAN MOTORISTS INSURANCE)	
COMPANY, LUMBERMEN'S MUTUAL)	
CASUALTY COMPANY, LUMBERMEN'S)	
UNDERWRITING ALLIANCE, UNIVERSAL)	JURY TRIAL DEMANDED
UNDERWRITERS INSURANCE COMPANY,)	
THE NORTH RIVER INSURANCE COMPANY,)	
NORTHERN INSURANCE COMPANY, UNITED)	
STATES FIRE INSURANCE COMPANY,)	
PROVIDENCE WASHINGTON INSURANCE)	
COMPANY, FIDELITY AND GUARANTY)	
INSURANCE UNDERWRITERS, INC., ST.)	
PAUL MERCURY INSURANCE COMPANY,)	
THE TRAVELERS CASUALTY AND SURETY)	
COMPANY (f/n/a THE AETNA CASUALTY)	
SURETY AND COMPANY and UNITED)	
STATES FIDELITY AND GUARANTY)	
COMPANY,)	
)	
Defendants.)	

Motion To Set Settlement Conference To
Negotiate an Agreement on Investigation Activities

Plaintiff, CAVU Ops., Inc. ("CAVU") moves the Court to set a settlement conference to negotiate an agreement pertaining to environmental investigation activities necessary at its property at 2525 Prairieton Road in Terre Haute, Indiana ("the Terre Haute Site"). CAVU seeks to establish a conference with the Court at the earliest possible date to address this issue. In support of this motion, CAVU states:

:

1. This case originally was set for as settlement conference with the Court on May 23, 2012. The parties were planning to attempt to negotiate a global settlement of all environmental issues and costs associated with CAVU's sites. At the time the parties set the original date for the settlement conference, CAVU believed that the parties had the necessary information to work towards a global resolution.

2. However, during a meeting with IDEM regarding the northern portion of the Terre Haute Site commonly referred to as the Process Area, it became apparent that the work required to address environmental issues at this portion of the Terre Haute Site and address IDEM's demands would have to be considerably expanded. On April 25, 2012, IDEM sent a letter to CAVU asserting that the work at the Site could not be limited to the area identified as the Process Area if contamination expanded beyond the boundaries CAVU had identified. IDEM's April 25, 2012 letter regarding the Process Area is attached as Exhibit A. This letter made it clear that, to achieve closure of the northern portion of the Terre Haute Site, CAVU was going to need to address areas to the south, west, and north of the area that originally was contemplated for remediation and closure, namely the original Process Area.

3. Furthermore, IDEM is requiring CAVU to take action or it will be removed from its Voluntary Remediation Program. IDEM is requiring CAVU to submit a revised RWP by August 1.

4. Knowing that the scope of the work at the Terre Haute Site was significantly greater and required additional investigation to prepare the necessary RWP, CAVU's environmental consultant, Keramida Environmental ("Keramida") prepared a proposal to investigate the Site and define the horizontal and vertical extent of contamination. This area now

is referred to as the Expanded Process Area. The investigation of the Expanded Process Area will take at least 6-8 weeks to complete and obtain sampling results. Following this investigation, Keramida believed that it could develop an accurate estimate of the cost necessary complete the remediation and obtain a No Further Action status for the Expanded Process Area.

5. Because the parties would not have the information necessary to discuss a global resolution of the Terre Haute Sites on May 23, 2012, the parties approached the Court to delay the settlement conference until a date when all the necessary information would be available. The parties discussed having a conference on the May 23 settlement conference date to negotiate a settlement for payment of the costs of the investigation of the Expanded Process Area. The Defendants, however, suggested that negotiation would not take considerable time and that an in-person conference was not necessary to negotiate an agreement for the investigation costs. Therefore, CAVU agreed to set aside the May 23 settlement conference and work on negotiating a settlement of the investigation costs without the assistance of the Court or an in-person meeting.

6. The Court re-set the settlement conference for negotiation of a global resolution of this matter for October 10, 2012. This date was chosen because it was believed that the necessary work and cost estimates could be developed in advance of this date.

7. Now, almost two months after the parties set aside the May 23 settlement conference, CAVU still does not have a signed agreement for payment of the investigation costs for the Expanded Process Area. The parties spent approximately 6 weeks negotiating the terms on an agreement and the scope of the investigation proposal. During this time, CAVU has answered numerous questions from the insurers in a very timely matter. The terms of the

original agreement and investigation proposal that CAVU proposed have not been significantly altered during this time.

8. Approximately one week ago, CAVU believed that the Defendants had agreed to both the terms of the agreement and the scope of the investigation proposal. However, on July 9, 2012, counsel for American Motorists Insurance Company (“American Motorists”) sent the parties a Rehabilitation Order that had been entered by an Illinois court with respect to Lumbermens Mutual Casualty Company (“Lumbermens Mutual”). The Rehabilitation Order is attached as Exhibit B.

9. Counsel for American Motorists has suggested that the Rehabilitation Order applies to American Motorists because Lumbermens Mutual is the parent company of American Motorists. Counsel for American Motorists also has suggested that the Rehabilitation Order may affect American Motorists’ ability to enter into an agreement regarding the Expanded Process Area. CAVU has asserted to the parties that it does not believe the Rehabilitation Order applies to American Motorists or any agreement for investigation costs for the Expanded Process Area. CAVU is still awaiting a response from American Motorists and the other Defendants as to how the Rehabilitation Order will affect the parties’ ability to enter into an agreement pertaining to investigation costs for the Expanded Process Area.

10. CAVU’s ability to respond to IDEM’s demands has been impeded by its inability to negotiate an agreement with Defendants. CAVU cannot fund the necessary investigation costs for the Expanded Process Area or other environmental costs for its Sites without insurance coverage from the Defendants. CAVU will not be able to meet IDEM’s demands to submit a revised RWP by August 1 due to its inability to conduct the necessary investigation.

11. CAVU's inability to conduct the necessary investigation at the Site also is threatening the parties' ability to conduct a settlement conference with the Court on October 10, 2012. Without completing the investigation work, CAVU cannot develop a cost estimate to conduct remediation and achieve No Further Action status for the Expanded Process Area.

12. CAVU therefore seeks a settlement conference with the Court at its earliest possible convenience to finalize an agreement for payment of investigation costs for the Expanded Process Area.

WHEREFORE, CAVU respectfully requests that the Court set a settlement conference at its earliest convenience to allow the parties to negotiate a final agreement for payment of investigation costs for the Expanded Process Area.

Respectfully submitted,

/s/ Michael D. Chambers

Robert R. Clark, Atty. No. 3488-49

Michael D. Chambers, Atty. No. 21573-06

Attorney for Plaintiff

TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
317-713-3500 (telephone)
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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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William N. Ivers, on behalf of American Motorists and Lumbermen's Mutual
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/s/ Michael D. Chambers

ATTACHMENT 4



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

Mitchell E. Daniels, Jr.
Governor

Thomas W. Easterly
Commissioner

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Indianapolis, Indiana 46204
(317) 232-8603
Toll Free (800) 451-6027
www.idem.IN.gov

August 7, 2012

Mr. Joseph B. Card
CAVU Ops, Inc.
P.O. Box 10159
Terre Haute, IN 47801

Re: **Project Termination**
Former Western Tar Site
2525 Prairieton Road
Terre Haute, Indiana
VRP #6990902

Dear Mr. Card:

This letter will serve as the denial of your most recent request for an extension of time to submit an adequate Remedial Work Plan and notice of the voiding of Western Tar's Voluntary Remediation Agreement. On November 22, 1999 IDEM entered into a Voluntary Remediation Agreement (VRA) with Western Tar Products Corporation for the purpose of remediating the release of hazardous substances or petroleum at the above referenced facility. To date, no actual remediation has occurred, and in fact the extent of contamination migrating offsite towards adjacent properties and waters of the state remains undefined despite this site's 13-year tenure in the Voluntary Remediation Program (VRP). The VRA states that the Applicant shall submit a Remediation Work Plan (RWP) not later than 180 days after the effective date of the Agreement, or longer if an extension is agreed to by the parties. The VRA further states that if the Applicant fails to submit the RWP within that period, the VRA is voidable at the discretion of IDEM. Additionally, the VRA provides that any time periods specified in the Agreement may be extended only by agreement of the parties. Following 13 years of back and forth correspondence and dispute and negotiation regarding site investigation and proposed remedial approaches, and numerous submittal deadline extension request approvals by this agency, the most recent agreed upon submittal date for an RWP was August 1, 2012. The Applicant has again requested an extension of time. IDEM can no longer agree to any further extensions.

Specifically pertaining to correspondence limited to the past year in this regard:

- IDEM reiterated in e-mail correspondence dated August 11, 2011 that timely resolution of issues pertaining to the delineation of contamination that had migrated beyond the property boundaries, and a definitive response regarding a schedule to proceed and to submit an approvable RWP were necessary in order to continue participation in the VRP. In this e-mail correspondence IDEM expressed a desire to remain reasonable, however as advised numerous times over the lifetime of this project IDEM communicated that the continued management of this site in the voluntary program could not proceed under the historical pattern of progress towards site characterization and RWP development.
- In e-mail correspondence dated August 17, 2011 Keramida Environmental (Keramida) responded indicating that site characterization and contaminant delineation would be complete, and a revised RWP would be submitted for agency review by December 8, 2011. In subsequent e-mail correspondence IDEM approved this most recent extension request.
- In e-mail correspondence dated December 19, 2011 Keramida advised that additional delineation activities were necessary prior to submittal of the RWP, and that a schedule for this work would be submitted for agency consideration later that week.
- In e-mail correspondence dated February 17, 2012 Keramida indicated the desire to schedule a meeting to discuss investigation activities for offsite contamination. In subsequent e-mail

correspondence (dated February 21, 2012) IDEM agreed to this request provided that a specific schedule to complete the work could be proposed as requested, and more specifically stated

If CAVU Ops can commit to a reasonably aggressive timeframe to complete the necessary work and submit a revised RWP, I can consider that. Otherwise, and I know I sound like a broken record here but we just can't continue like this in the VRP any longer with this sort of drawn-out, indefinite schedule. The schedule of additional work referenced below (from our last correspondence two months ago) is discussed within a one week timeframe. I honestly intend to be reasonable, but after so many years of not gaining any traction, (still) incomplete delineation, and a reluctance or inability to move forward in a reasonable timeframe, I'm put in a position where I just have to draw a line somewhere. I can't avoid that any longer, as I'm sure you understand. We honestly have other sites that require our time and resources, and I can't continue to commit time and resources to this site under the current pattern of activity. As referenced in this agency's December 30, 2008 correspondence, if an approvable RWP cannot be developed, we need to terminate this site's participation in the VRP.

- A meeting to discuss this site was held on March 21, 2012 between IDEM, Keramida Environmental, and your legal counsel. During this meeting Keramida proposed June 20, 2012 as the new date to complete site characterization activities and the delineation of offsite contamination, and submit a RWP to IDEM. IDEM again approved of this most recent postponement of the RWP submittal date, and in fact set August 1, 2012 as the submittal date in an effort to provide even more flexibility in order to facilitate that site work could finally be completed and that a RWP could be submitted. This most recent date was memorialized in formal agency correspondence dated April 25, 2012. In this letter, IDEM stated *"Following 13 years of participation in the VRP, if site characterization cannot be completed and an approvable RWP as discussed cannot be submitted to this agency by August 1, 2012, our firm intention is to terminate participation for this site in the VRP and transfer IDEM regulatory oversight to the State Cleanup Program."* This sentiment was discussed during our March 21st meeting, and acknowledged during that meeting by both Keramida and your legal counsel.
- In e-mail correspondence dated July 30, 2012 Keramida advised that although the above sentiment from IDEM's April 25th letter was understood, due to ongoing external negotiations with insurance carriers the site characterization and offsite investigation had still not occurred, and as such the latest submittal deadline for the RWP would not be met yet again. Again, in subsequent e-mail correspondence IDEM asked for yet another specific proposed date to complete the work and submit the RWP as discussed. Keramida responded and proposed December 24, 2012 as the new date to complete site characterization and investigation of offsite contamination, and submit the RWP.

Despite our understanding of the general complications associated with the ongoing negotiations with insurance carriers, IDEM cannot reasonably approve this most recent extension request. In accordance with the VRA and this agency's prior correspondence, this letter provides notification that this VRP project is being terminated effective today. The VRP is a voluntary program without authority to enforce timeframes. The only recourse the VRP has is to void the agreement as provided for therein. The Accounting Department will conduct a final audit of your billing account. Any balances due or refunds due will be calculated in order to close out the project. As previously advised, agency oversight for this site is hereby being transferred to IDEM's State Cleanup Program. Subsequent formal correspondence from that program will follow.

Sincerely,



Corey Webb,
Section Chief
Voluntary Remediation Program
Office of Land Quality

ATTACHMENT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CAVU OPS., INC.,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 1:11-cv-01527-TWP-MJD
AMERICAN MOTORISTS INSURANCE)	
COMPANY, LUMBERMEN'S MUTUAL)	
CASUALTY COMPANY, LUMBERMEN'S)	
UNDERWRITING ALLIANCE, UNIVERSAL)	
UNDERWRITERS INSURANCE COMPANY,)	
THE NORTH RIVER INSURANCE COMPANY,)	
NORTHERN INSURANCE COMPANY, UNITED)	
STATES FIRE INSURANCE COMPANY,)	
FIDELITY AND GUARANTY)	
INSURANCE UNDERWRITERS, INC., ST.)	
PAUL MERCURY INSURANCE COMPANY,)	
THE TRAVELERS CASUALTY AND SURETY)	
COMPANY (f/n/a THE AETNA CASUALTY)	
SURETY AND COMPANY and UNITED)	
STATES FIDELITY AND GUARANTY)	
COMPANY,)	
)	
Defendants.)	

Joint Motion to Amend Case Management Deadlines

The parties, by counsel, jointly move to amend the case management deadlines in this matter. In support of this motion, the parties state:

1. The parties are attempting to resolve this matter through a global settlement of all claims. The parties, however, do not believe that they can effectively negotiate any settlement until they have an accurate estimate of the costs necessary to remediate the sites at issue.

2. An accurate estimate of the costs necessary to remediate the sites depends upon what the Indiana Department of Environmental Management (“IDEM”) will require with respect to remediation of the largest of the sites at issue (referred to as the “Expanded Process Area”).

3. Due to inactivity at the Expanded Process Area, IDEM removed the Expanded Process Area from the Voluntary Remediation Program and placed it in the State Cleanup Program. This change of IDEM programs also resulted in having a new IDEM project manager assigned to the Expanded Process Area.

4. With the change of IDEM programs and IDEM project manager, there currently is uncertainty with respect to what remediation IDEM will require for the Expanded Process Area and what specific standards IDEM will apply to the site. Therefore, Plaintiff, CAVU Ops., Inc. (“CAVU”) cannot currently provide an accurate estimate of the costs necessary to complete remediation and close the Expanded Process Area under IDEM standards.

5. CAVU believes that it will be able to obtain the necessary guidance from IDEM and obtain a reasonable estimate of the costs for the Expanded Process Area no later than mid-March 2013. CAVU then will be able to provide settlement demands to the Defendants, and the Defendants should then have the information necessary to respond to the demands (assuming all necessary guidance from IDEM and information pertaining to the remedial plans is obtained in March, as expected).

6. Therefore, the parties believe that they should be in a position to negotiate and potentially reach a global settlement of the claims in this matter in early May 2013.

7. Case management deadlines are rapidly approaching in this matter. The current deadlines are as follows:

Plaintiff's expert disclosures – February 26, 2013

Defendants' expert disclosures – April 1, 2013

Motions to exclude experts – May 31, 2013

Final Witness and Exhibit Lists – April 1, 2013

Dispositive motion deadline – May 31, 2013

Discovery deadline – May 21, 2013

8. The parties jointly desire to move the deadlines each four to five months later in the year to allow the parties time to negotiate a global resolution of the claims in this matter after the information necessary to the negotiations becomes available. The parties propose the following new case management deadlines,

Plaintiff's expert disclosures - July 12, 2013

Defendants' expert disclosures - August 12, 2013

Motions to exclude experts - Sept. 30, 2013

Final Witness and Exhibit Lists - August 12, 2013

Dispositive motion deadline - October 30, 2013

Discovery deadline - October 15, 2013

9. The parties believe that their resources would best be used in an initial attempt to resolve the case before extensive litigation commences. The parties respectfully submit that the revised deadlines proposed above should allow them sufficient time to determine whether a resolution of this matter is possible without active litigation.

10. The parties are mindful that the Court has previously extended these deadlines and desires for this case to move forward. If the required information is available in March 2013, and the parties are unable to reach a global resolution by the end of April 2013, they will be prepared to proceed with the litigation under the schedule provided above.

11. The parties also respectfully request that the Court schedule a settlement conference among the parties in May 2013.

12. The parties all have agreed and consented to the filing of this motion by Plaintiff's counsel.

WHEREFORE, the parties respectfully request that the Court extend the case management deadlines for approximately four to five months and set a settlement conference among the parties.

Respectfully submitted,

/s/ Michael D. Chambers

Robert R. Clark, Atty. No. 3488-49

Michael D. Chambers, Atty. No. 21573-06

Attorney for Plaintiff

TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
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/s/ Michael D. Chambers

ATTACHMENT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CAVU OPS., INC.,)	
)	
Plaintiff,)	
v.)	
)	CASE NO. 1:11-cv-01527-TWP-MJD
AMERICAN MOTORISTS INSURANCE)	
COMPANY, LUMBERMEN'S MUTUAL)	
CASUALTY COMPANY, LUMBERMEN'S)	
UNDERWRITING ALLIANCE, UNIVERSAL)	
UNDERWRITERS INSURANCE COMPANY,)	
THE NORTH RIVER INSURANCE COMPANY,)	
NORTHERN INSURANCE COMPANY, UNITED)	
STATES FIRE INSURANCE COMPANY,)	
PROVIDENCE WASHINGTON INSURANCE)	
COMPANY, FIDELITY AND GUARANTY)	
INSURANCE UNDERWRITERS, INC., ST.)	
PAUL MERCURY INSURANCE COMPANY,)	
THE TRAVELERS CASUALTY AND SURETY)	
COMPANY (f/k/a THE AETNA CASUALTY)	
SURETY AND COMPANY),)	
)	
Defendants.)	

Order Granting Joint Motion to Amend Case Management Deadlines

This matter is before the Court on the Joint Motion to Amend Case Management Deadlines.

It is therefore ORDERED that the Court hereby grants the Joint Motion to Amend Case Management Deadlines to the following:

III.F. Plaintiff shall disclose the name, address and curriculum vitae of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **July 12, 2013**.

G. Defendants shall disclose the name, address and curriculum vitae of all expert witnesses, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **August 12, 2013**.

H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections no later than **September 30, 2013**. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their respective brief within the briefing schedule established by Local Rule 56.1.

I. All parties shall file and serve their final witness and exhibit lists on or before **August 12, 2013**. The list of final witnesses shall include a brief synopsis of the expected testimony and counsel's certification that the witness has been interviewed and/or deposed.

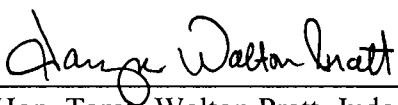
IV.C. Track 2: Dispositive motions are expected and shall be filed by **October 30, 2013**; all discovery shall be completed by **October 15, 2013**.

All other requirements of the parties' Approved Case Management Plan (Dkt. 81) remain in full force and effect. So as not to impact the trial date, no further extensions will be granted.

Dated: 01/17/2013

Copies:
All Counsel of Record

1770793.1


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

U.S. ENVIRONMENTAL
PROTECTION AGENCY

FEB 14 2013

OFFICE OF REGIONAL
COUNSEL

U.S. ENVIRONMENTAL
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OFFICE OF REGIONAL
COUNSEL